

United States
Circuit Court of Appeals

For the Ninth Circuit.

5

LESLIE-CALIFORNIA SALT COMPANY, a
Corporation, Claimant of the American
Steamship "PYRAMID," Her Engines, etc.,
Appellant,

vs.

D. L. LARKIN, Owner of the American Gasboat
"FOUR SISTERS," Her Engines, etc.,
Appellee.

APOSTLES ON APPEAL.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of
California, Third Division.

FILED

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F. D. MONCKTON,
CLERK.

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In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 19,191.

D. L. LARKIN,

Libellant,

vs.

The American Steamship "PYRAMID," Her Engines, etc.,

Respondent;

LESLIE-CALIFORNIA SALT COMPANY, a Corporation,

Claimant and Cross-Libellant;

The American Gas Boat "FOUR SISTERS," Her Engines, etc.,

Cross-Respondent.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of the Above-entitled Court:

Please prepare the apostles on appeal in the above-entitled action, containing the following:

1. All documents and data required by subdivision 1 of Section 1 of Rule IV of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

2. All pleadings, with the exhibits annexed thereto.

3. The opinion of the Court herein.

4. The interlocutory decree herein.
5. The notice of appeal herein.
6. The assignments of error herein. [1*]
7. The stipulation and order respecting the exhibits on appeal, and the bonds on appeal.

Dated, San Francisco, California, this 13th day of July, 1927.

HAROLD M. SAWYER and
ALFRED T. CLUFF,

Proctors for Claimant and Cross-Libellant.
DANIEL W. EVANS,
Of Counsel.

[Endorsed]: Copy of the within is hereby admitted on this 13th day of July, 1927.

BELL & SIMMONS,
Attorneys for Larkin Transp. Co.

Filed Jul. 14, 1927. [2]

[Title of Court and Cause.]

STATEMENT OF CLERK UNDER RULE IV.
PARTIES.

Libellant: D. L. Larkin.

Respondent: The American S. S. "Pyramid," etc.

Claimant and Cross-libellant: Leslie-California
Salt Co., a Corp.

Cross-respondent: The American Gasboat "Four
Sisters," etc.

*Page-number appearing at the foot of page of original certified Apostles on Appeal.

PROCTORS.

BELL & SIMMONS, Esqs., for Libelant and
Cross-respondent.

HAROLD M. SAWYER, Esq., ALFRED T.
CLUFF, Esq., and DANIEL W. EVANS,
Esq., for Claimant and Cross-libelant. [3]

PROCEEDINGS.

1927.

Jan. 18. Filed libel for collision.

Issued monition for the attachment of
the S. S. "Pyramid," which was re-
turned with the following return of
the U. S. Marshal endorsed thereon:

"In obedience to the within Moni-
tion, I attached the American S. S.
"Pyramid" therein described, on the
18 day of Jan. 1927, and have given
due notice to all persons claiming the
same that this Court will, on the 1st
day of Feby. 1927, (if that day be a
day of jurisdiction, if not, on the next
day of jurisdiction thereafter), pro-
ceed to trial and condemnation
thereof, should no claim be interposed
for the same. I further return that
I posted a notice of seizure on the
herein-named S. S. "Pyramid." I
further return that I handed to and
left with Capt. A. D. Thompson a

Leslie-California Salt Company

copy of this Writ, at San Francisco, Calif., this 20 day of Jan. 1927.

FRED L. ESOLA,

United States Marshal.

By E. H. Gibson,

Deputy.

San Francisco, Cal. Jan. 20, 1927."

Filed claim of Leslie-California Salt Co. to S. S. "Pyramid."

Filed admiralty stipulation for the release of the "Pyramid" in the sum of \$1500.00.

Feb. 1. Proclamation duly made — claimant granted 10 days to plead.

10. Filed answer to libel.

Filed Cross-libel by Leslie-California Salt Co.

Issued monition for *attached* of Gas boat "Four Sisters" on cross-libel, which bears the following endorsement:

"In obedience to the within monition, I attached the Gas Boat 'Four Sisters' therein described, on the 10th day of Feb. 1917, and have given due notice to all persons claiming the same that this Court will, on the 1st day of March, 1927, (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to trial and condemnation thereof, should no claim be interposed for the same.

I further return that I posted a notice of seizure on the herein-named Gas Boat 'Four Sisters.'

FRED L. ESOLA,
United States Marshal.

By E. H. Gibson,
Deputy.

San Francisco, Cal., Feb. 10-27." [4]

- Feb. 14. Filed admiralty stipulation for the release of the "Four Sisters" in the sum of \$1500.00.
16. Filed claim of D. L. Larkin to the "Four Sisters."
- Mar. 1. Proclamation duly made on the cross-libel.
4. Filed answer to cross-libel.
- Apr. 13. Hearing had and cause submitted, Honorable George M. Bourquin, Judge.
14. Filed opinion. Ordered that a decree be entered in favor of libelant.
- May 24. Filed testimony.
- July 7. Filed interlocutory decree.
11. Filed notice of entry of decree.
14. Filed notice of appeal.
Filed assignment of errors.
Filed cost bond on appeal.
Filed praecipe for apostles. [5]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 19,191.

D. L. LARKIN,

Libelant,

vs.

The American Steamship "PYRAMID," Her Engines, etc.,

Respondent.

LIBEL FOR COLLISION.

To the Honorable, the Judges of the Above Court:

The libel of D. L. Larkin, libelant, an individual, against the steamship "Pyramid," her engines, boilers, tackle, apparel, furniture and equipment (all of which are hereinafter included when reference is made to said steamship), and against all persons intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

I.

At all times herein mentioned libelant was a resident of Alameda, California, and owner of the gas boat "Four Sisters," whereof one H. B. Hampton was and is master. Said gas boat was and is an American vessel built of wood of the burden of 38.95 gross tons, or thereabouts, of the length of 58.5 feet, the breadth of 20.5 feet and the depth of 4.5 feet, or thereabouts.

II.

The steamship "Pyramid" herein proceeded against, was and is an American vessel built of wood, of the burden of [6] 603.77 gross tons, or thereabouts, of the length of 161 feet, the breadth of 27.5 feet and the depth of 7 feet, or thereabouts, and is now afloat on the navigable waters of San Francisco Bay or its tributaries, and within the territorial jurisdiction of this Honorable Court.

III.

At the time of the collision hereinafter referred to, the "Four Sisters" was being operated by the Larkin Transportation Co., a corporation organized and existing under and by virtue of the laws of the State of California, on a basis whereby said corporation employed and paid the crew of said vessel and paid all expenses of operation and paid to Libelant a percentage of her earnings.

Heretofore said corporation duly assigned to libelant all of its rights and claims against the "Pyramid" arising out of the hereinafter mentioned collision and Libelant is now the owner thereof.

IV.

On Saturday morning, October 2, 1926, the "Four Sisters" having been moored to the southerly side of pier number 23 on the waterfront of San Francisco, left such pier, bound for Oakland, and upon moving from said pier, and while yet in the dock or slip between said pier 23 and pier 21, gave one long blast of her whistle. In proceeding out of said dock or slip, the course of the "Four

Sisters'' was parallel to the northerly side of pier 21, and nearer thereto than to the southerly side of pier 23, and she proceeded thereon very slowly. There was no answer to said whistle, and the course ahead of the "Four Sisters" was clear. The weather was clear and fair. [7]

V.

As the "Four Sisters" slowly approached the easterly end of pier 21, on said course, and when only a very short distance from said end of pier 21, the bow of the "Pyramid" suddenly, and without any warning signal, moved swiftly into view from behind said easterly end of pier 21, crossing the said course of the "Four Sisters" at right angles from the latter's starboard to her port, at a high rate of speed. The course of the "Pyramid" was parallel with the easterly end line of pier 21, and not more than twenty-five feet distant therefrom.

VI.

As soon as the bow of the "Pyramid" moved into view from behind the easterly end of pier 21, the "Four Sisters," *in extremis*, in an endeavor to avoid collision, swung her head to port, hard over, and went full speed astern, which was the only thing that could be done to avoid collision; but the "Pyramid" did not change her course or alter her speed, and with her stem, with great force, at about 7:45 o'clock A. M. on said October 2, 1926, struck the "Four Sisters" amidships on her starboard side, splintering and breaking the main clamp, two strakes of her ceiling, breaking and pushing one

frame out of place, straining the starboard bulwark and rail, splintering and breaking the covering board for about 20 feet, also five hull planks, and her upper and lower guard timbers, and starting all the calking in and about the damaged planking.

VII.

Just as the "Pyramid's" stem struck the "Four Sisters," the former blew several blasts on her whistle which were the first whistles blown by her. The "Pyramid" did not alter either her course or her excessive speed before she struck, but, on the contrary, carried the "Four Sisters" along on her bow for a long [8] distance after striking her, and was still on a course parallel to the pier-end line after she had passed the easterly end of pier 23.

VIII.

Said collision was in no way due to any fault on the part of the "Four Sisters," which was in all respects carefully and properly managed, but was solely due to faults on the part of the "Pyramid," in that she was proceeding on a course parallel with the pierhead line and too close thereto for safety, and in violation of the rules and regulations of the Board of State Harbor Commissioners of the Port of San Francisco, to wit, of Item 200 of Section Seven thereof providing that "vessels must not run within five hundred (500) feet from and parallel to the pierhead line"; and in that she was proceeding at excessive speed under the circumstances; and in that she did not keep out of the way of the "Four Sisters"; and in that she did not answer

or give proper heed to the aforesaid long whistle blast of the "Four Sisters," or give any signals prior to the collision; and in that she did not, prior to said collision, have any proper watch or lookout; and in that she did not change her course to her starboard or slacken her speed or stop or reverse prior to striking the "Four Sisters" or for a long time thereafter; and in that she was in other and further respects, of which libelant is not at present advised, improperly and carelessly navigated.

IX.

By reason of said collision and the damage to the "Four Sisters" resulting therefrom, and by reason of the repairs necessitated thereby, and by reason of the delay of said vessel and the frustration of the voyage of said vessel, libelant and his assignor have been damaged in the sum of \$1,159.10, no part of which has been paid. [9]

X.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the libelant prays that process in due form of law and according to the practice of this Honorable Court, may issue against said steamship "Pyramid," her engines, boilers, motors, tackle, apparel, furniture and equipment, and that she may be condemned and sold to answer for the damages alleged in this libel; and that this Court will be pleased to decree to libelant the damages aforesaid, with interest and costs, and for such

other and further relief in the premises as in law and justice it may be entitled to receive.

BELL & SIMMONS,
Proctors for Libelant.

D. L. LARKIN,
Libelant. [10]

United States of America,
Northern District of California,—ss.

D. L. Larkin, being first duly sworn, deposes and says:

That he is the libelant in the above-entitled libel; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

D. L. LARKIN.

Subscribed and sworn to before me this 18th day of January, 1926.

[Seal] MINNIE V. COLLINS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jan. 18, 1927. [11]

[Title of Court and Cause.]

ANSWER TO LIBEL.

To the Honorable, the Judges of the District Court
of the United States, for the Northern District
of California:

Leslie-California Salt Company, a corporation,

claimant of the American steamer "Pyramid," respondent herein, answering unto the libel of D. L. Larkin herein, admits, denies and alleges as follows:

I.

That it has no information or belief sufficient to enable it to answer the allegations, or any of them, of Article I of said libel, and therefore calls for strict proof of said allegations and each of them, if relevant.

II.

Admits the allegations of Article II of said libel.

III.

That it has no information or belief sufficient to enable it to answer the allegations, or any of them, of Article III of said libel, and therefore calls for strict proof of said [12] allegations and each of them, if relevant.

IV.

Answering the allegations of Article IV of said libel, admits that on Saturday morning, October 2d, 1926, the gas boat "Four Sisters" was moored on the southerly side of pier 23 on the waterfront of San Francisco; admits that said gas boat left such pier; denies that upon moving from said pier, or at any other time or place or while yet in the dock or slip between pier 23 and pier 21, or elsewhere, or at all, said gas boat gave one long blast or any other blast or blasts of her whistle, or any other signal; denies that in proceeding out of said dock or slip, the course of the "Four Sisters" was

parallel to the northerly side of pier 21, and in this connection alleges that the said gas boat, in coming out of said slip bore down upon the northeasterly end of pier 21; admits that the course of the "Four Sisters" was nearer to the northerly side of pier 21 than to the southerly side of pier 23; denies that the "Four Sisters" proceeded on such course very slowly or slowly; denies that any whistle or whistles were ever given by the "Four Sisters" and denies that the course ahead of the said gas boat was clear; admits that the weather was clear and fair.

V.

Answering the allegations of Article V of said libel, denies that the "Four Sisters" slowly approached the easterly end of pier 21; denies that her course was parallel to the north side of pier 21; denies that the bow of the "Pyramid" moved swiftly into view or at a high rate of speed or without any warning or other signal or signals; admits that said vessels were on crossing courses; denies that said courses were at right angles; admits that the starboard side of the "Four Sisters" was to the port side of the "Pyramid"; admits that the course of the "Pyramid" was parallel to the easterly end of pier 21; denies that said [13] vessel or said course were not more than 25 feet distant therefrom.

VI.

Answering the allegations of Article VI of said libel, denies that as soon as the bow of the "Pyramid" moved into view, or at any other time or at

all, the "Four Sisters," in an endeavor to avoid collision, or for any other purpose, swung her head to port or elsewhere, or went full speed astern, or that in any other respect she changed her course or speed; denies that the "Pyramid," at said time and place, did not change her course or alter her speed; admits that the two vessels collided about 7:45 A. M. on said day; denies that the "Pyramid," with her stem or otherwise, struck the "Four Sisters" with great or any force amidships on her starboard side, or splintered or broke the main clamp or two strakes of her ceiling, or broke or pushed one frame out of place, or strained the starboard bulwark or rail, or splintered or broke the covering board for about 20 feet, or at all, or five hull planks, or her upper or lower guard timbers, or any of them, or started the calking in or about the planking; denies that said planking, or any other part of said boat, was damaged.

VII.

Answering the allegations of Article VII of said libel, denies that just as the "Pyramid" stem struck the "Four Sisters" the former blew several blasts on her whistle, and in this connection alleges that prior to the collision, and as soon as the "Pyramid" sighted the "Four Sisters," the "Pyramid" blew several blasts on her whistle as a danger signal; denies that said signal was the first blown by the "Pyramid"; denies that the "Pyramid" did not alter her course or speed before the collision; denies that her speed was excessive; denies that after the collision she carried the "Four Sisters"

on her bow for a long or any [14] distance at all; denies that the "Pyramid" was still on a course parallel to the pierhead line after she passed the eastern end of pier 21.

VIII.

Answering the allegations of Article VIII of said libel, denies that said collision was in no way due to any fault on the part of the "Four Sisters"; denies that the "Four Sisters" was in all or in any respects carefully or properly managed; denies that said collision was due solely or at all to any fault or faults on the part of the "Pyramid"; denies that the "Pyramid's" course was too close to the pierhead line for safety; denies that the "Pyramid" violated the rules and regulations of the Board of State Harbor Commissioners of the port of San Francisco; denies that the "Pyramid" violated item 200 of Section 7 thereof providing that "vessels must not run within 500 feet from and parallel to the pierhead line"; denies that there is such a rule; denies that the Board of State Harbor Commissioners of the port of San Francisco ever made such a rule; denies that the "Pyramid" was proceeding at an excessive rate of speed under the circumstances; denies that the "Pyramid" did not keep out of the way of the "Four Sisters"; denies that a long whistle blast or any blast or blasts or any other signal was ever given by the "Four Sisters"; denies that the "Pyramid" did not give any signals prior to the collision; denies that the "Pyramid" did not have a proper watch or lookout prior to said collision; denies that

the "Pyramid" did not change her course or slacken her speed or stop or reverse prior to the collision or for a long or any time thereafter; denies that the "Pyramid" was in any respect or respects improperly or carelessly navigated.

IX.

Answering the allegations of Article IX of said libel [15] denies that the "Four Sisters" was damaged by reason of said collision or at all, or that any repairs were necessitated thereby or that she was delayed or that her voyage was frustrated; denies that libellant or his assignor have been damaged in the sum of \$1,159.10, or in any other sum by reason of said collision.

X.

Answering the allegations of Article X of said libel, denies that all and singular or all or singular the premises are true, but admits that if true, they would be within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Further answering said libel, and as a further and separate defense thereto, respondent and claimant allege:

I.

That a collision between the steamer "Pyramid" and the gas boat "Four Sisters" occurred at about the hour of 7:45 A. M. on October 2d, 1926, in San Francisco Bay at a point near the northeasterly end of pier 21 on the San Francisco waterfront; that the circumstances of said collision are as follows:

On said day, at about the hour of 7:35 A. M., the steamer "Pyramid," being then and there moored on the northerly side of pier 17 on the San Francisco waterfront, left her moorings for the purpose of proceeding to the southerly side of pier 25 to deliver cargo to another vessel. As she left her moorings she sounded one blast on her whistle and then backed out into the stream to a point about 70 feet away from the end of pier 17, where she backed and turned so that her bow was headed to the north. She then started ahead, proceeding at a very slow rate of speed. As she came ahead she sounded a second warning blast of her whistle. At all the times herein mentioned there were two men on watch in [16] her bow.

Thereafter, proceeding very slowly and cautiously as aforesaid, the steamer "Pyramid" continued on her course until she reached a point about abreast of the easterly end of pier 21 and about 60 or 70 feet distant therefrom. At said time and place and without any warning whatsoever, the gas boat "Four Sisters" came suddenly into view about 100 feet away, proceeding at a very high rate of speed, coming apparently from a mooring place on the southerly side of pier 21 at the inshore end, and bearing down upon the northeasterly end of pier 21. The "Pyramid" immediately sounded a four blast danger signal on her whistle. Her engines were immediately put full speed astern and her helm was put to port. The "Four Sisters," however, came on rapidly without reduc-

ing her speed or sounding any whistles, and the two vessels collided. The stem of the "Pyramid" came in contact with the "Four Sisters" on her starboard side about amidships. Thereafter the "Four Sisters" proceeded on and went clear of the "Pyramid." As a result of the collision, the "Pyramid's" stem was broken and splintered and she was otherwise damaged and injured. At all the times hereinabove mentioned the weather was fair and clear.

II.

That the collision was in no way due to any fault on the part of the "Pyramid," her officers or crew, but on the contrary, was due solely to the fault of the said gas boat "Four Sisters," and to the carelessness and negligence of her master and crew in the following respects:

1. In that in leaving her moorings at said dock or pier, the said gas boat "Four Sisters" utterly failed to navigate with the care and prudence required under the circumstances.

2. In that the said gas boat "Four Sisters" utterly failed to sound the regulation signals required of a vessel of [17] her type and class under the then existing conditions, or any signals.

3. In that the said gas boat "Four Sisters" utterly failed to heed or pay attention to the signals duly sounded by the "Pyramid."

4. In that the said gas boat "Four Sisters" was not equipped with a proper or adequate or efficient whistle, as required by law for vessels of her type and class.

5. In that the said gas boat "Four Sisters" did not have on watch proper and competent officers or members of the crew.

6. In that the said gas boat "Four Sisters," prior to and at the time of the said collision, was running at a rate of speed which was excessive under the circumstances.

7. In that the gas boat "Four Sisters" and her officers and crew were negligent in other and further particulars of which claimant and respondent is not at present advised but of which it begs leave to offer proof as and when advised, and to amend its answer accordingly.

WHEREFORE, respondent and claimant prays that said libel may be dismissed and that it may have judgment for its costs incurred herein and for such other relief as may be meet and proper in the premises.

HAROLD M. SAWYER,
ALFRED T. CLUFF,

Proctors for Claimant and Respondent.

DANIEL W. EVANS,

Of Counsel. [18]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Vernon S. Hardy, being first duly sworn, deposes and says:

That he is an officer, to wit, the treasurer of Leslie-California Salt Company, the claimant named in the foregoing answer; that he makes this

verification on behalf of the said corporation; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be upon information and belief, and as to such matters that he believes it to be true.

VERNON S. HARDY.

Subscribed and sworn to before me this 10th day of February, 1927.

[Seal] HENRIETTA HARPER,
Notary Public in and for the City and County of
San Francisco, State of California.

Due service of the within is hereby admitted on this 10th day of February, 1927.

BELL & SIMMONS,
Attorneys for Libellant.

[Endorsed]: Filed Feb. 10, 1927. [19]

In the Southern Division of the United States
District Court, for the Northern District of
California, Third Division.

IN ADMIRALTY—No. 19,191.

D. L. LARKIN,

Libellant,

vs.

The American Steamship "PYRAMID," Her En-
gines, etc.,

Respondent,

LESLIE-CALIFORNIA SALT COMPANY, a
Corporation,

Claimant and Cross-Libellant,

The American Gas Boat "FOUR SISTERS,"
Her Engines, etc., .

Cross-Respondent.

CROSS-LIBEL FOR COLLISION.

To the Honorable, the Judges of the District Court
of the United States, for the Northern Dis-
trict of California:

The cross-libel of Leslie-California Salt Com-
pany, a corporation, as owner of the steamer
"Pyramid" against the gas boat "Four Sisters,"
her engines, tackle, apparel and furniture, and
against all persons intervening for their interest
therein, in a cause of collision civil and maritime,
respectfully alleges:

I.

That Leslie-California Salt Company was and is
a corporation duly created, organized and existing
under and by virtue of the laws of the State of
Delaware, and that it is, and at all the times herein
mentioned was, the owner of the American steamer
"Pyramid," an American vessel of 457 net tons,
and that it operated said steamer on San Fran-
cisco Bay and its tributaries. [20]

II.

That the gas boat "Four Sisters" is an Amer-
ican gas boat of 31.54 net tons and is now afloat
on the waters of San Francisco Bay or its tribu-

taries and within the jurisdiction of this Honorable Court.

III.

That on the 2d day of October, 1926, at about the hour of 7:45 A. M., a collision occurred between the said steamer "Pyramid" and the said gas boat "Four Sisters" in the waters of San Francisco Bay at a point near the northeasterly end of pier 21 on the San Francisco waterfront; that as a result of said collision the stem of the "Pyramid" was broken and splintered and she was otherwise damaged and injured.

IV.

That the circumstances of said collision are as follows:

On said day, at about the hour of 7:35 A. M. the steamer "Pyramid," being then and there moored on the northerly side of pier 17 on the San Francisco waterfront, left her moorings for the purpose of proceeding to the southerly side of pier 25 to deliver cargo to another vessel. As she left her moorings she sounded one blast on her whistle and then backed out into the stream to a point about 70 feet away from the end of pier 17, where she backed and turned so that her bow was headed to the north. She then started ahead, proceeding at a very slow rate of speed. As she came ahead she sounded a second warning blast of her whistle. At all the times herein mentioned there were two men on watch in her bow.

Thereafter, proceeding very slowly and cautiously as aforesaid, the steamer "Pyramid" con-

tinued on her course until she reached a point about abreast of the easterly end of pier 21 and [21] about 60 or 70 feet distant therefrom. At said time and place and without any warning whatsoever, the gas boat "Four Sisters" came suddenly into view about 100 feet away, proceeding at a very high rate of speed, coming apparently from a mooring place on the southerly side of pier 21 at the inshore end, and bearing down upon the northeasterly end of pier 21. The "Pyramid" immediately sounded a four-blast danger signal on her whistle. Her engines were immediately put full speed astern and her helm was put to port. The "Four Sisters," however, came on rapidly without reducing her speed or sounding any whistles, and the two vessels collided. The stem of the "Pyramid" came in contact with the "Four Sisters" on her starboard side about amidships. Thereafter the "Four Sisters" proceeded on and went clear of the "Pyramid." As a result of the collision, the "Pyramid's" stem was broken and splintered and she was otherwise damaged and injured. At all the times hereinabove mentioned the weather was fair and clear.

V.

That the collision was in no way due to any fault on the part of the "Pyramid," her officers or crew, but on the contrary, was due solely to the fault of the said gas boat "Four Sisters" and to the carelessness and negligence of her master and crew in the following respects:

1. In that in leaving her moorings at said dock or pier, the said gas boat "Four Sisters" utterly failed to navigate with the care and prudence required under the circumstances.

2. In that the said gas boat "Four Sisters" utterly failed to sound the regulation signals required of a vessel of her type and class under the then existing conditions, or any signals.

3. In that the said gas boat "Four Sisters" utterly failed to heed or pay attention to the signals duly sounded by the [22] "Pyramid."

4. In that the said gas boat "Four Sisters" was not equipped with a proper or adequate or efficient whistle, as required by law for vessels of her type and class.

5. In that the said gas boat "Four Sisters" did not have on watch proper and competent officers or members of the crew.

6. In that the said gas boat "Four Sisters," prior to and at the time of the said collision, was running at a rate of speed which was excessive under the circumstances.

7. In that the gas boat "Four Sisters" and her officers and crew were negligent in other and further particulars of which cross-libellant is not at present advised, but of which it begs leave to offer proof as and when advised, and to amend its cross-libel accordingly.

VI.

That by reason of said collision and the damage to the "Pyramid" resulting therefrom, and by reason of the repairs necessitated thereby and by

reason of the delay of said vessel and the frustration of her voyage, the cross-libellant has been damaged in the sum of \$1,205.25, no part of which has been paid and for which the cross-libellant prays reparation with interest thereon from the date of the collision.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the cross-libellant prays that process in due form of law, according to the course of this court in cases of admiralty and maritime jurisdiction, may issue against the [23] cross-respondent gas boat, her engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of the damages aforesaid, with interest and costs; and that the said cross-respondent gas boat may be condemned and sold to pay the same, and that said cross-libellant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

HAROLD M. SAWYER,

ALFRED T. CLUFF,

Proctors for Claimant and Cross-libellant.

DANIEL W. EVANS,

Of Counsel. [24]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Vernon S. Hardy, being first duly sworn, deposes and says:

That he is an officer, to wit, the treasurer of Leslie-California Salt Company, the cross-libelant named in the foregoing cross-libel; that he makes this verification on behalf of the said corporation; that he has read the foregoing cross-libel and knows the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated to be upon information and belief, and as to such matters that he believes it to be true.

VERNON S. HARDY.

Subscribed and sworn to before me this 10th day of February, 1927.

[Seal] HENRIETTA HARPER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Feb. 10, 1927. [25]

[Title of Court and Cause.]

ANSWER TO CROSS-LIBEL.

To the Honorable, the Judges of the Above Court:

D. L. Larkin, claimant of the American gas boat
“Four Sisters,” cross-respondent herein, answering

unto the cross-libel of Leslie-California Salt Company herein, admits, denies and alleges as follows:

I.

That he has no information or belief sufficient to enable him to answer the allegations of Article I of said cross-libel and therefore calls for strict proof of each and every one of said allegations, if relevant.

II.

Admits the allegations of Article II of said cross-libel. [26]

III.

Answering the allegations of Article III of said libel, admits the same, with the exception that he has no information or belief sufficient to enable him to answer the allegation that as a result of said collision the stem of the "Pyramid" was broken and splintered and she was otherwise damaged and injured, and placing his denial upon that ground, denies that as a result of said collision the stem of the "Pyramid" was broken or splintered or that she was otherwise damaged or injured.

IV.

Answering the allegations of Article IV of said libel, denies that as the "Pyramid" left her moorings she sounded her whistle; denies that as she came ahead she sounded a second or any warning blast of her whistle; denies that at all or any of the times mentioned in said cross-libel there were two men on watch in the bow of the "Pyramid"; denies that the "Pyramid" proceeded at a very slow or a slow rate of speed; with respect to the

other allegations in the first paragraph of said Article IV of said cross-libel, alleges that he has no information or belief sufficient to enable him to answer the same and placing his denial upon that ground, denies each and every one of said allegations and calls for strict proof thereof if relevant.

Denies that the steamer "Pyramid" proceeded very slowly or slowly or cautiously until she reached a point about abreast of the easterly end of pier 21 and about 60 or 70 feet distant therefrom; denies that at said alleged time and place the "Four Sisters" came into view without any warning; denies that at said alleged time and place the "Four Sisters" came suddenly into view about 100 feet away; denies that at said alleged time or place or at any time or place on said day the "Four [27] Sisters" was proceeding at a very high or a high rate of speed; denies that at said alleged time or place the "Pyramid" immediately sounded a four blast or any danger or other signal on her whistle; denies that the "Pyramid's" engines were immediately or at all put full speed or at all astern; denies that her helm was put to port; denies that the "Four Sisters" came on rapidly; denies that the "Four Sisters" came on without reducing her speed or without sounding any whistles; admits that the stem of the "Pyramid" came into contact with the "Four Sisters" on her starboard side about amidships; admits that thereafter the "Four Sisters" proceeded on and went clear of the "Pyramid"; alleges that he has no in-

formation or belief with respect to the allegations concerning damage to the "Pyramid" sufficient to enable him to answer them, therefore placing his denial upon that ground denies that the "Pyramid's" stem was broken or splintered or that she was otherwise damaged or injured and calls for strict proof thereof if relevant; admits that at all the times mentioned the weather was fair and clear.

V.

Answering the allegations of Article V of said cross-libel, denies that the alleged collision was in no way due to any fault on the part of the "Pyramid," her officers or crew; denies that the alleged collision was due solely or at all to the fault of the "Four Sisters" or other carelessness or negligence of her master or the crew in any respect whatsoever; denies that the "Four Sisters" was at fault in any respect; denies that the master or crew of the "Four Sisters" was careless or negligent in any respect.

Denies that the "Four Sisters" failed in any respect to navigate with the care and prudence required under the circumstances in leaving her moorings [28]

Denies that the "Four Sisters" failed to sound the regulation signals required of a vessel of her type and class under the then existing conditions; denies that the "Four Sisters" failed to sound any signals or signal, and on the contrary, alleges that she sounded all of the regulation signals.

Denies that the "Pyramid" sounded any signals or any signal; denies that the "Four Sisters" failed

to heed or pay attention to any signals sounded by the "Pyramid."

Denies that the "Four Sisters" was not equipped with the proper or adequate or efficient whistle as required by law for vessels of her type and class, and on the contrary, alleges that her whistle was in all respects proper, adequate and efficient.

Denies that the "Four Sisters" did not have on watch proper or competent officers or members of the crew, and on the contrary, alleges that her watch was in all respects proper and competent.

Denies that the "Four Sisters" prior to or at the time of said collision was running at a rate of speed which was excessive under the circumstances or at all, and alleges on the contrary that the speed of the "Four Sisters" prior to the time of said collision was very slow and at the time of said collision she had practically no way upon her.

Denies that the "Four Sisters" or her officers or crew were negligent in any or in other or further particulars of which cross-libelant was or is not advised; and on the contrary alleges that neither the "Four Sisters" nor her officers nor her crew were negligent in any particulars whatsoever.

VI.

Answering Article VI of said cross-libel, denies that by reason of said collision the "Pyramid" was damaged; [29] denies that any repairs to the "Pyramid" were necessitated by said collision or that she was delayed or her voyage frustrated thereby; denies that by reason of the alleged damage to the "Pyramid" resulting therefrom or by

reason of the repairs necessitated thereby or by reason of any delay of said vessel or any frustration of her voyage, cross-libelant has been damaged in the sum of one thousand two hundred five and 25/100 dollars (\$1,205.25), or in any sum whatsoever.

VII.

Answering the allegations of Article VII of said libel, denies that except as herein expressly admitted, all or singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Further answering said cross-libel and as a further and separate defense thereto, respondent and claimant refers to his original libel herein against the "Pyramid" and here realleges all of the allegations therein contained, hereby expressly referring to said original libel and making it a part hereof and incorporating it as a further and separate defense to the cross-libel herein.

WHEREFORE, respondent and claimant prays that said cross-libel may be dismissed with costs, and that libelant's prayer in his original libel may be granted and for such other and further relief as may be meet and just.

BELL & SIMMONS,

Proctors for Respondent and Claimant. [30]

United States of America,
Northern District of California,—ss.

D. L. Larkin, being first duly sworn, deposes and says:

That he is the respondent and claimant named in the foregoing answer to cross-libel; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

D. L. LARKIN.

Subscribed and sworn to before me this 4th day of March, 1927.

[Seal] GEORGE REID TUTTLE,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of a copy of the within answer to cross-libel is admitted this 4th day of March, 1927.

HAROLD M. SAWYER,
ALFRED T. CLUFF,
Proctors for Cross-libelant.

[Endorsed]: Filed Mar. 4, 1927. [31]

[Title of Court and Cause.]

TESTIMONY.

Wednesday, April 13, 1927.

Counsel Appearing:

For Libelant: GOLDEN W. BELL, Esq.

For Respondent: D. W. EVANS, Esq.

Mr. BELL.—If your Honor please, this is a collision case, a collision between two vessels on the San Francisco waterfront, and, that being the

case, I would suggest before the proceedings begin it would be desirable to exclude the witnesses on both sides. Generally, these cases give rise to conflict, and I think they should be excluded.

The COURT.—I do not think so.

Mr. BELL.—The libel was filed by the Larkin Transportation Company, the owner of the "Four Sisters," a vessel the length of which is 58 feet and the breadth about 20 feet, against the steamship "Pyramid," a vessel owned by the Leslie-California Salt Company, the length of which was about 161 feet and her breadth about 27 feet; at the time of the collision the "Four [32] Sisters" was owned by Mr. D. L. Larkin, the libelant, and was being operated by the Larkin Transportation Company, and in the libel it has been alleged that an assignment has been made of the interests of the Larkin Transportation Company to the libelant, D. L. Larkin. The collision occurred on Saturday morning, October 7, of 1926, under these circumstances: The "Four Sisters," owned by Mr. Larkin, was moored on the south side at pier 23, San Francisco; that pier is northward of the Ferry Building. The piers to the north of the Ferry Building are numbered by odd numbers; therefore, she being moored to the south side of pier 23, between 23 and 21, she left that morning, giving one blast whistle, according to the rules required, and proceeded slowly out of that slip parallel to the lines of the sides of the wharf. As she approached the end of pier 21, the bow of the "Pyramid" suddenly loomed from behind the end of the pier,

the "Pyramid" being proceeding parallel to the pier end and within a very short distance of it, within 20 or 21 feet. Immediately, the "Four Sisters" attempted to drive her bow to port to avoid the collision, and backed, but she was unsuccessful in the maneuver, and was struck about amidships by the "Pyramid" and seriously damaged. The faults alleged on the part of the "Pyramid" are that she was proceeding on a course parallel to the pierhead line, and within 50 feet from and parallel to that line contrary to the rule of the State Board of Harbor Commissioners, which requires that vessels must not run within 500 feet from and parallel to the pierhead line.

Aside from that rule, under the circumstances she was proceeding too close to that pierhead line and at too great a speed.

That, in brief, is a statement of libellant's case. Of course, libellant was made a party by the owners of the "Pyramid" against the Larkin Transportation Company; the two matters are [33] pending; I don't know whether counsel for the other side desires to make a statement with relation to the cross-libel before I begin.

Mr. EVANS.—Of course, I will simply state the movements of the "Pyramid" before the collision, relied upon by us in defense and in charging the fault against the "Four Sisters." The "Pyramid" was moored at pier 17, about three piers to the south of the place where the collision occurred. She left that pier to go to pier 25, which was on the other side of the place where the collision oc-

curred, a distance of approximately 1000 feet. She left her pier, proceeded out slowly, backed and went ahead; she backed two or three times, and at the time of the collision she was actually proceeding at a speed of about 3 miles an hour. She gave her two whistles before she reached the end of pier 21, where the collision occurred, and she had two men on watch on her bow. She heard no whistle from the "Four Sisters" and her impression of the speed of the "Four Sisters" is that she was leaving the wharf at an excessive rate of speed. We charge that the "Four Sisters" had no lookout, that she left her pier without giving a timely or a proper signal, and that she was proceeding at an excessive rate of speed under the circumstances.

With reference to the charge that we violated the rules of the Harbor Board in running too close to the pierhead, it is our contention that that rule does not apply in the present instance.

We also intend to refute the evidence, or the allegation, or the charges that we were running too fast and failed to give the proper signal.

The COURT.—Is there a cross-libel? [34]

Mr. EVANS.—A cross-libel and also a response to the cross-libel.

The COURT.—They are separate suits?

Mr. EVANS.—No; all one case.

TESTIMONY OF JAMES BYRNE, Jr., FOR
LIBELANT.

JAMES BYRNE, Jr., called for the libelant, sworn.

Mr. BELL.—Q. What is your occupation?

A. Assistant Secretary of the Board of Harbor Commissioners.

Q. How long have you been with the Board?

A. 32 years.

Q. Do you know, in your capacity of Secretary, whether or not any rules exist passed by the Board of Harbor Commissioners with respect to the distance vessels are to proceed parallel to and off pier-head lines? A. Yes.

Q. What was that rule in 1926?

A. 500 feet.

Q. Can you state that rule to the Court in words, in the language of the rule itself, Mr. Byrne?

A. That no vessel operated by steam shall run within 500 feet parallel to the end of the piers.

Q. How long has that rule been in effect?

A. It has been in effect 30 years and over.

Q. Have you any publications in which that rule appears?

The COURT.—Is there going to be any dispute over this rule?

Mr. EVANS.—No dispute over the existence of the rule.

The COURT.—If you have the rule in writing, introduce it.

(Testimony of James Byrne, Jr.)

Mr. BELL.—I should like to have the witness refer to the rule and give the Court the exact language of it.

A. Vessels must not run within 500 feet from and parallel to the pierhead line.

Mr. BELL.—That is all.

Cross-examination.

Mr. EVANS.—Q. Is that rule enforced with respect to vessels changing their berths a short distance away? [35]

Mr. BELL.—Objected to as calling for the conclusion of the witness.

The COURT.—The objection will be sustained.

Mr. EVANS.—If your Honor please, Mr. Byrne is an officer of the Harbor Commissioners—

The COURT.—I know, but you are asking if it is enforced.

Mr. EVANS.—He certainly should know if that rule is enforced.

Mr. BELL.—It is immaterial whether it is or not.

The COURT.—If you can show any action by the Board which provides that this rule does not apply to vessels passing from berth to berth, that may be a different matter. The objection is sustained.

Mr. EVANS.—Has the Board of Harbor Commissioners ever interpreted that rule?

Mr. BELL.—The same objection.

The COURT.—You may answer, it is preliminary.

Mr. EVANS.—Has the Board ever interpreted

(Testimony of James Byrne, Jr.)

that rule in any way, shape or form as to what it does mean?

A. They have notified various vessels that run within that limit that that was their rule and asked them to observe it.

Q. Under what circumstances?

Mr. BELL.—The same objection, immaterial, irrelevant and incompetent.

The COURT.—Overruled; if not competent the Court will not give it any consideration.

A. Vessels that operate like the "Harvard" and "Yale" and those that would create a wash, and disturb the vessels that are tied to the piers. [36]

Mr. EVANS.—Q. Navigating under what circumstances—for a long distance along the pierhead line?

A. Yes.

Q. Has a complaint ever been brought to your attention regarding vessels running a shorter distance along the pierhead line?

A. Not a short distance; no.

TESTIMONY OF F. J. LARKIN, FOR LIBEL- ANT.

F. J. LARKIN, called for the libelant, sworn.

Mr. BELL.—Q. What is your occupation?

A. Manager of the Larkin Transportation Company.

Q. How long have you held that position?

A. Since they were incorporated in 1920.

(Testimony of F. J. Larkin.)

Mr. BELL.—It is admitted that D. L. Larkin owned the “Four Sisters,” and we admit that the Leslie Salt Company owned the “Pyramid.”

Mr. EVANS.—That is correct.

Mr. BELL.—It is also admitted that the Larkin Transportation Company is a corporation, and that the Leslie Salt Company is a corporation?

Mr. EVANS.—That is correct.

Mr. BELL.—Q. What, if any, relationship did the Larkin Transportation Company have in 1926 to the “Four Sisters”?

A. They were operating it under charter.

Q. From whom? A. From D. L. Larkin.

Q. D. L. Larkin, the owner of the vessel?

A. Yes.

Q. Was that a written or oral charter?

A. That was an oral charter.

Q. What were the provisions of that charter?

A. The provisions of that charter were that the Larkin Transportation Company should operate and have full control of the “Four Sisters” paying 15 per cent of the gross receipts.

Q. And the wages of the crew and expenses were paid by whom? [37]

A. All expenses paid by the Larkin Transportation Company.

Q. After this collision was any assignment ever made by the Larkin Transportation Company to D. L. Larkin?

A. Yes, the Larkin Transportation Company made an assignment to D. L. Larkin.

(Testimony of F. J. Larkin.)

Q. I show you this assignment, Mr. Larkin. Is that the assignment that was made? A. Yes.

Mr. BELL.—I offer that in evidence, if your Honor please, as Libelant's Exhibit 1.

The COURT.—Admitted.

(The document is marked Libelant's Exhibit 1.)

Mr. BELL.—Q. Mr. Larkin, was the "Four Sisters" inspected by the United States Department of Inspection?

A. It was.

Q. What requirements with respect to officers and crew were required? A. One operator.

Q. One operator? A. Yes, one operator.

Q. Anyone else? A. No one else.

Q. I show you a document entitled Certificate of Inspection.

The COURT.—Is there any issue over this, any dispute about it?

Mr. BELL.—I am not sure.

Mr. EVANS.—It just came to my attention.

The COURT.—Is there any issue in the pleadings that involve this question?

Mr. BELL.—Yes, they claim that our vessel was improperly manned because she did not have more than one man on board

Mr. EVANS.—No, I have made no such allegation. I am willing to let this go in.

Mr. BELL.—I will offer this in evidence.

Q. This inspection was made and this certificate issued by the United States officials?

A. It was. [38]

(Testimony of F. J. Larkin.)

(The document is marked Libelant's Exhibit 2.)

Q. Such certificate was in existence at the time of the collision? A. Yes, yearly inspection.

Q. I show you a picture and ask you if the small vessel in the picture is the "Four Sisters"?

A. Yes.

Mr. BELL.—I offer that in evidence so the Court may have some idea of the character of the vessel involved.

(The document is marked Libelant's Exhibit 3.)

Q. Were you present on the vessel or on the wharf at the time the collision occurred, Mr. Larkin?

A. I was not.

Mr. BELL.—That is all.

Mr. EVANS.—No questions.

TESTIMONY OF H. B. HAMPTON, FOR LIBELANT.

H. B. HAMPTON, called for the libelant, sworn.

Mr. BELL.—Q. What is your occupation?

A. I am operator on the vessel "Four Sisters."

Q. How long have you been operator on that vessel? A. About 3 years.

Q. What had been your occupation prior thereto?

A. Well, running other vessels and engineer on her.

Q. What papers, if any, do you hold?

A. I carry an engineer's license, and also an operator's license.

Q. An operator's license to operate such vessels as the "Four Sisters"? A. Yes.

(Testimony of H. B. Hampton.)

Q. Were you on board the "Four Sisters" in October when the collision occurred between that vessel and the "Pyramid"? A. Yes.

Q. Where was the "Four Sisters" lying the morning of October 2, 1926?

A. On the south side of pier 26 well up by the bulkhead.

Q. Any other vessel lying at the dock?

A. The "Henrietta," just ahead of me. [39]

Q. Will you tell what transpired as you started out that morning?

A. Well, I pulled out of there at about half speed, and as I proceeded out of the slip I blew a long blast of the whistle, and the flood tide was gradually sweeping me down on the end of pier 21, and as I neared the end, the bow of the "Pyramid" suddenly bobbed around the end of the wharf.

Q. How close was the "Pyramid" to the end of pier 21?

A. Not more than 20 or 25 feet.

Q. When you saw the bow of the "Pyramid" suddenly appear behind that pier, what, if anything, did you do?

A. I attempted to swing over to port and back up.

Q. Then what happened?

A. We both kept going ahead naturally with the head wheel on the boats and we came together.

Q. How did you come together?

A. The "Pyramid" struck me about amidship.

(Testimony of H. B. Hampton.)

Q. What, if any damages was done by the collision to your boat?

A. About 5 planks, and the frame, and the covering board and guard were all broken.

Q. What is the size of those timbers which were broken?

A. About 3x12, 4x12.

Q. Prior to the collision, did you hear any whistle from the "Pyramid"?

A. Just before we struck she blew four blasts.

Q. How long before you struck was that?

A. That was very little before—it pretty near happened together.

Q. After you had come together, what did you do and what did the "Pyramid" do?

A. The "Pyramid" kept on going ahead and did not back up until after we struck.

Q. Any change in the course of the "Pyramid" before the collision? A. Apparently not.

Q. How was the wind on that morning, Captain?

A. There was a North wind, about 5 or 6 miles an hour.

Q. Blowing from the north?

A. Blowing from the north.

Q. What was the condition of the tide that morning? [40]

A. Flood tide; it was about an hour and a half before high water.

Q. Where were you, Captain, from the time that you left the wharf until the time of the collision?

A. In the pilot-house.

(Testimony of H. B. Hampton.)

Q. What did you do after the collision; where did you go? A. I went to Oakland.

Q. You proceeded on, did you, across the bay?

A. Yes.

Q. Do you know where the "Pyramid" went?

A. Yes, she went in to pier 25; we drifted around there for a while until I saw her go into the wharf and then we proceeded on to Oakland.

Mr. BELL.—That is all.

Cross-examination.

Mr. EVANS.—Q. When you were lying at the dock, Captain, you were well up to the bulkhead?

The COURT.—What do you mean you were well up to the the bulkhead?

A. Up close to the Embarcadero, the shore side.

Mr. EVANS.—May it please the Court, I have a photostatic enlargement of the chart here. This represents pier 21 and here is 23. Where were you lying?

A. Right in here.

Q. Right up against the bulkhead?

A. Right in close there.

Q. Where was the "Henrietta" lying?

A. Right in here.

Q. How large a vessel was the "Henrietta"?

A. She was about 58 feet long, I believe.

Q. When you came out, just show us your course.

A. I came out this way naturally to clear the "Henrietta" and was right about there.

Q. What were you doing, backing?

(Testimony of H. B. Hampton.)

A. No, I was going ahead.

The COURT.—Proceed and show your course.

A. I came out this way and the tide was gradually setting me over here a little bit, I saw I had plenty of room to clear the end of the wharf, and when I got right about in here somewhere the "Pyramid" bobbed around the corner.

Mr. EVANS.—Q. How far away from pier 21 were you, [41] Captain, approximately?

A. 30 feet; something like that.

Q. When you left here you were going at half speed? A. Yes.

Q. What is half speed on your vessel?

A. About 5 miles an hour.

Q. Did you change your speed at all as you came down here? A. No.

Q. You maintained a steady speed, half speed?

A. Yes.

Q. Where did you blow your whistle?

A. About in here.

Q. About half way down? A. Yes.

Q. Regarding your whistle, is it an efficient whistle? A. Yes.

Q. How does it operate? A. By air.

Q. From tanks or by the engine?

A. From tanks; the engine pumps the air up into the tanks.

Q. Do you know what pressure you had in the tanks that morning?

A. I always had over 60 pounds.

Q. Has the whistle been inspected recently?

(Testimony of H. B. Hampton.)

A. Yes.

Q. Did it require any repairs? A. No.

Q. It is a regular gas boat whistle? A. Yes.

Q. Did you have anybody on the lookout or on the bow as you came out? A. No.

Q. How many men were on board that morning?

A. There were 4.

Q. Where were the men placed?

A. Two of them were down below; they were not placed anywhere.

Q. Where were they on board?

A. Two down below and one standing on the after deck.

Q. One on the after deck? A. Yes.

Q. What is the approximate distance between your pilot-house and the bow of your boat?

A. Maybe 40 feet right to the bow.

Q. Forty feet from the pilot-house to the bow?

A. Yes.

Q. Were the windows of your pilot-house open or closed? A. The front one was always open.

Q. When you saw the "Pyramid" about how far away from you was she?

A. Not more than 75 feet. [42]

Q. Had she already come around the corner?

A. I just saw her bob around the corner.

Q. Where did the collision take place?

A. About here.

Q. Was it about 100 feet out from the wharf?

A. Possibly. The "Pyramid" was coming kind of in this way.

(Testimony of H. B. Hampton.)

Q. How far down the slip were you when you first saw her? A. About in here.

Q. How far would you say that would be?

A. Not more than 75 feet.

Q. Seventy-five feet down? A. Yes.

Q. You collided about 100 feet out? A. Yes.

Q. You say that when you hit the "Pyramid" she was not backing at that time? A. Yes.

Q. By that you mean she did not have any backward motion?

A. Her wheel was not going back.

Q. Could you see the wheel from where you were?

A. Yes.

Q. When did you hear the four blasts?

A. Just before we struck.

Q. How far away from you was the "Pyramid" at that time, roughly? A. Maybe 2 feet.

Q. Then you heard the four blasts? A. Yes.

Q. You heard no whistle before that? A. No.

Q. Where was the damage to your boat when you finally had it surveyed? Was it toward the bow or toward the stern?

A. No, it was right where she struck.

Q. In that area? A. Right in there.

Q. It did not exert itself one way or the other?

A. No.

Q. At what angle did the boat strike?

A. Thirty-five degrees, approximately.

Q. Between the bows?

A. Yes, an angle like that. [43]

Q. If we could illustrate it here, say this is the

(Testimony of H. B. Hampton.)

“Pyramid” coming along here and this is the
“Four Sisters.”

A. She struck at about that angle.

Q. You were getting across the bow?

A. Yes, I was attempting to swing so as to hit
a glancing blow.

Q. After you collided what happened? Which
way did the “Pyramid” go?

A. The “Pyramid” started to back up and I
twisted back in the gear, I was still backing, and
she pulled back in here and then I went in this
way and out.

Q. Was your boat going forward or backward
at the time of the collision?

A. I was still going forward.

Q. You still had headway on her? A. Yes.

Q. What is the custom on the waterfront with
regard to shifting the berths of a vessel that wants
to go from 17 to 21, from 2 to 3 docks?

Mr. BELL.—It is objected to as calling for the
conclusion of the witness.

The COURT.—He may answer. For the sake
of the record, the objection is overruled.

Mr. EVANS.—Suppose one vessel was shifting
from her berth a distance of a thousand feet, how
far out would she go?

A. Everybody has their own idea of that, I guess.

Q. How far would you go?

Mr. BELL.—If your Honor please, that is ob-
jected to as calling for the conclusion of the witness,
immaterial.

(Testimony of H. B. Hampton.)

The COURT.—Sustained.

Mr. EVANS.—Q. What have you seen on the waterfront? Have you seen vessels backing out, going out 500 feet and then coming down?

A. I have seen a great deal of the stern-wheelers in particular, they back out pretty nice and they handle pretty well, back up, and as a rule they back out pretty well. [44]

Q. How far would you say?

A. Five hundred feet or more.

Q. Five hundred feet to go over here, a distance of a thousand feet?

A. Yes, that is the best way to handle a boat.

Redirect Examination.

Mr. BELL.—Q. How far above the deck, when you are standing in your pilot-house, are your eyes from the main-deck?

A. About 12 feet, I should think.

Q. Anything forward of the pilot-house between you and the bow to obstruct your vision?

A. Nothing there.

Q. The men that were on board the boat that morning were not members of the crew of the boat?

A. They are not steady men, they are just men that work there when there is any work to be done.

Q. What are their duties?

A. Sort of stevedores?

Q. Loading and unloading cargo? A. Yes.

Q. On the boat? A. Yes.

(Testimony of H. B. Hampton.)

Q. You were in sole charge of the navigation of the boat, were you? A. Yes.

Q. And you worked the engines from the pilot-house A. Yes.

Q. You were in charge of that also? A. Yes.

Recross-examination.

Mr. EVANS.—Those men were employed on board the boat that morning, were they not?

A. Yes.

Q. That pier was covered with a shed?

A. Yes.

Q. How high is that shed?

A. I could not tell you.

Q. It is impossible for you to see around it as you go by? A. Certainly.

The COURT.—That is to say there were buildings on the end of the pier?

A. Yes.

Q. So high that neither ship could see over it?

A. No.

Q. That is the ordinary lookout? A. No.

TESTIMONY OF W. H. LARKIN, FOR LIBEL- ANT.

W. H. LARKIN, called for the libelant, sworn.

[45]

Mr. BELL.—Q. Mr. Larkin, what is your occupation?

A. Well, I am working on shore now.

Q. Were you on board the "Four Sisters" when

(Testimony of W. H. Larkin.)

the collision occurred between her and the "Pyramid"? A. Yes.

Q. Where were you actually prior to the time of the collision? A. I was down in the cabin.

Q. Where were you when the "Four Sisters" left the dock?

A. When she left I took in the after line and I went directly down into the cabin there. I had the morning paper and I went down there and looked over it:

Q. Did you come on deck before the collision?

A. No.

Q. When did you first come on deck?

A. Well, when he commenced backing up I commenced to get on deck; I thought there was something wrong.

Q. What, if anything, happened.

A. Just when I got on deck she struck, and it knocked me off my balance.

Q. Did you have anything to do with the navigation of the vessel? A. No.

Q. Anything to do with the working of the engines? A. No.

Q. You were on there in the capacity, then, of loading and unloading cargo?

A. Yes, that is all.

Cross-examination.

Mr. EVANS.—Q. When you came on deck, Mr. Larkin, where was the steamer "Pyramid"?

A. When I got on deck they just came together.

(Testimony of W. H. Larkin.)

Q. You did not see anything that went before?

A. No. I went right down below and I was there until he commenced to back up, when I commenced to get up on deck, and just as I got up on deck they came together.

Q. In what condition was the whistle on the boat at that time?

A. I was sitting down alongside of the engine; I could not say as to the whistle. [46]

Q. Did you hear the boat whistle?

A. I could not because there is so much noise down there, with the engine, I could not hear the whistle.

Q. You could not hear the whistle when you were down below? A. No.

Q. The whistle is really with reference to the engine-room right above it?

A. It is right above the top of the pilot-house.

The COURT.—Is that right up over the engine?

A. Yes, right up over the engine.

Redirect Examination.

Mr. BELL.—Q. Do you know whether you heard the whistle or whether you did not hear the whistle?

A. No, I could not say that I heard it, because I did not hear it; I know I did not hear it.

Q. You were reading the paper?

A. I was looking over the paper and my mind was not on the whistle.

TESTIMONY OF A. DAVIS, FOR LIBELANT.

A. DAVIS, called for the libelant, sworn.

Mr. BELL.—Q. Do you remember the morning that the “Pyramid” and the “Four Sisters” came into collision?

A. I do.

Q. Where were you on that morning before the collision? A. On pier 23.

Q. What were you doing there?

A. Giving instructions to the riggers to put stays on the “Henrietta.”

Q. Did you see the “Four Sisters” leave the wharf?

A. Well, I seen her after she got away from the wharf.

Q. Where was she at that time?

A. She was a little beyond the center of the pier line going out.

Q. You were where on the wharf?

A. Standing at the stern of the “Henrietta.”

Q. At the stern of the “Henrietta”? A. Yes.

A. What speed did the “Four Sisters” proceed out at?

A. I [47] should judge 3 or 4 miles an hour.

Q. Did you or did you not hear any whistle from the “Four Sisters” as she proceeded out?

A. I did.

Q. About where was she when she blew that whistle?

A. She was farther out than halfway.

(Testimony of A. Davis.)

Q. A little farther out than halfway?

A. Yes.

Q. Will you tell the Court what you saw, if anything, of the collision?

A. I don't remember much about it.

Q. What did you next see after the whistle of the "Four Sisters" blew?

A. Well, about the next thing that I know about is I heard the crash and whistling, and about the same time the "Pyramid" was carrying the "Four Sisters" along on her bow.

Q. You did not pay any attention after you heard the whistle of the "Four Sisters" before that crash? A. No.

Q. That attracted your attention again?

A. Yes.

Q. What did the "Pyramid" do as far as you know after that crash, did you observe?

A. Well, the next that I seen of the "Pyramid" she was on the south side of pier 25.

Q. How far off the end of the pier 21 would you say the collision occurred, where the vessels were when you saw them? A. Less than 50 feet.

Q. Do you know whether or not the "Pyramid" was backing at that time? A. No.

Cross-examination.

Mr. EVANS.—Q. When you first saw the "Four Sisters" you say she was beyond the center of the pier line; what do you mean by that?

A. Well, a little farther than halfway out, about somewhere in that neighborhood.

(Testimony of A. Davis.)

Q. Halfway out? A. Yes.

Q. Where was she with reference to pier 21?

A. She was between 21 and 23.

Q. Closer to which pier? Please point out to the Court just exactly where you first saw the "Four Sisters"; this is 21 and [48] this is 23.

A. I should judge about in here.

Q. About in here? A. Yes.

Q. About how far away from 21?

A. I don't know exactly.

Q. You were back here on the "Henrietta"?

A. I was about in here on the Henrietta."

Q. Was the "Henrietta" headed in or out?

A. Headed in.

Q. The stern was out here? A. Yes.

Q. Were you on the boat or on the dock?

A. On the dock.

Q. Talking to a rigger? A. Yes.

Q. Paying no particular attention to what went on at that time? A. No.

Q. This is about how far from the place where the collision occurred, where you were standing?

The COURT.—From where?

Mr. EVANS.—From the point of the collision. This distance here is 790 feet.

The COURT.—It will show for itself.

Mr. EVANS.—About 700 feet.

Q. Would you say that the whistle or the crash first attracted your attention?

A. It was about the same time.

Q. About the same time?

(Testimony of A. Davis.)

A. I don't remember which was first; in fact, it was very close together.

Q. You did not see the boats before they came together?

A. No; I saw this boat going out.

Q. You saw this boat?

A. I saw this boat going out.

Q. Have you any idea of the direction these boats took the minute they came together? Could you tell from where you were whether they were going across the pierhead line or swinging out this way?

A. Only when I seen them, that is all I know, when they were in collision. [49]

Q. You could not tell which particular direction they were taking at that time? A. Yes.

Q. How were they going?

A. The "Pyramid" was coming up this way and the "Four Sisters" was lying across her bow, like this.

Q. Now, they struck; which direction did they go? A. When they struck?

Q. Yes. Did they continue along in this way or did the "Four Sisters" come across the bow of the "Pyramid," did the "Pyramid" push her this way, or what happened?

A. I do not exactly know, but the "Pyramid," I don't think she changed her course at all. The next thing I saw, I was attracted by something, I don't know whether it was by a rigger, or what it was, but the "Four Sisters" was going on across

(Testimony of A. Davis.)

the bay and after I got through I went around across the pier and the "Pyramid" was coming in to 25.

Q. What sort of whistle did the "Four Sisters" have? A. An air whistle.

Q. How was it with reference to quality, was it a loud, piercing whistle, or was there an escape of air when they blew the whistle, or what?

A. It is an air whistle.

Q. It was a gas boat whistle? A. Yes.

Redirect Examination.

Mr. BELL.—Q. Are you in the employ, or have you ever been in the employ of the Larkin Transportation Company or Mr. D. L. Larkin?

A. No.

Mr. BELL.—I believe that is all.

The COURT.—Proceed.

TESTIMONY OF A. D. THOMPSON, FOR RESPONDENT.

A. D. THOMPSON, called for the respondent, sworn.

Mr. EVANS.—Q. Your occupation is that of master mariner, Captain, is it not?

A. Yes. [50]

Q. What papers do you hold?

A. Master, mate and pilot.

Q. San Francisco Bay and tributaries?

A. Yes.

Q. How long have you been on the "Pyramid"?

(Testimony of A. D. Thompson.)

A. I have been on the "Pyramid" about 10 years, very near.

Q. In what capacity? A. As master.

Q. You were master on the morning of the collision on October 2, 1926, were you not? A. Yes.

Q. Describe to the Court the maneuvers of your vessel prior to the time of the collision. Where were you lying? A. I was lying at pier 17.

Q. Where were you going?

A. We were going over to pier 25.

Q. What did you do?

A. We backed out from pier 17, we blew one blast of the whistle, one long blast, backed 150 feet from the end of pier 17 and then went ahead, and then I had to back again, because she did not answer the helm, and I went ahead again, and I still had to back against before I was up to pier 21, and I blew one blast before I got to pier 21, and then I backed again and swung off about 10 feet from the dock, and I went ahead, and when I came around the corner of pier 21 the "Four Sisters" appeared coming out, but I did not hear any whistle.

Q. Then what happened?

A. Well, I reversed full speed astern and blew four blasts.

Q. What movement did you see on board of the "Four Sisters," if any?

A. I saw a couple of men running around there.

Q. Where was the "Four Sisters" when you first saw her?

(Testimony of A. D. Thompson.)

A. I was halfway between the north corner of pier 21, so he must have been at least 60 feet or something like that from the corner.

Q. Sixty feet from the corner inside of the slip?

A. Not exactly,—from that corner.

Q. Did you notice any change in the course or speed of the “Four Sisters” after you saw her?

A. No. [51]

Q. You did not? A. No.

Q. How did your vessel head, at what angle, about?

A. Well, parallel with the dock, very near.

Q. At what speed were you going then?

A. We were going under a slow bell; the boat is not very fast anyway.

Q. Give us an approximation of the speed, Captain? A. About, it might be $3\frac{1}{2}$ or 4 miles.

Q. An hour? A. Yes.

Q. Was there anybody on the bow of your vessel? A. Yes, I had 2 men there.

Q. Did your vessel have any headway upon her at the moment of the collision?

A. We had some, not very much, because if I had had I would have sunk him.

Q. After the collision what happened?

A. I backed away and swung in toward the dock.

Q. Did you ever hear the whistle of the “Four Sisters”?

A. No.

Q. On that morning? A. No.

Q. Did you hear it on any subsequent occasion?

(Testimony of A. D. Thompson.)

A. Yes, I heard it, but you want to be very close to it when you hear it or you never hear it.

Q. When did you hear it?

A. I heard it a few times later.

Mr. BELL.—If your Honor please, that is objected to, as to anything subsequent to the collision.

The COURT.—I suppose it would be a reasonable presumption that the condition of the whistle would be the same from constant inspection.

Mr. EVANS.—Q. Did you hear that whistle at or near the time of the collision, and the same day or near thereto?

A. I heard it the same day when I passed him going over to Oakland, when I went over to the shipyard. [52]

Q. When was that?

A. That was the same day, in the afternoon.

Q. Under what circumstances did you hear the whistle, how far away?

A. I blew a passing whistle for him and he answered it.

Q. How far away from your boat was he?

A. I could not say; it must be a quarter of a mile. I don't know if he was that far.

Q. Describe the whistle.

A. Well, it has a very poor sound.

Q. Is it loud?

Q. If he blew that up at the bulkhead you would not hear it. Just before I saw him he should have blown his whistle.

(Testimony of A. D. Thompson.)

Q. You have been a master navigating in San Francisco Bay for how long?

A. About 44 years.

Q. What is the custom with reference to changing the dock of a vessel over a short distance? How far out do the vessels go?

Mr. BELL.—Objected to as immaterial, irrelevant and incompetent.

The COURT.—The Court will hear it over the objection. If not competent, it will be ignored in making up the decision.

A. The vessels do not go out very far. They generally keep clear of the dock.

Cross-examination.

Mr. BELL.—Q. Which dock were you lying at before you started out that morning?

A. Pier 17.

Q. Which side, the north or south side?

A. North side.

Q. As you started out, did you give a blast of your whistle? A. Yes.

Q. You backed out, did you? A. Yes.

Q. How far did you go beyond the pierhead line of pier 21, do you know?

A. Well, I figure about 60 feet.

Q. About 60 feet? A. Yes. [53]

Q. Is pier 17 as long as pier 21?

A. Yes, it is about the same.

Q. It is the same length, is it? A. Yes.

Q. Pier 19 is considerably shorter, is it?

A. Nineteen is shorter.

(Testimony of A. D. Thompson.)

Q. You were about 60 feet off of pier 17—

A. I was about 150 feet.

Q. One hundred and fifty feet off of pier 17?

A. Yes, when I backed out and swung around.

Q. When you backed out which way did you swing your bow, to port or to starboard?

A. I swung my bow to starboard in swinging out.

Q. So that you swung this way? A. Yes.

Q. And the tide was flood, was it not, against your bow?

A. There was very little tide of any kind.

Q. Are you sure of that, Captain?

A. Yes, very little.

Q. Do you know what the tide stage was that morning?

A. There is never much tide in close to the docks; about an hour and a half before high water.

Q. About an hour and a half before high water?

A. Yes.

Q. Then, as you started up, Captain, you were slanting in a little in this direction on account of the tide?

A. After I got up a little further to pier 21.

Q. You were coming in? A. Yes.

Q. How far do you think you were off pier 21 when you got to that?

A. About 60 feet, I guess.

Q. So you were coming in at a slant like that?

A. Yes.

Q. You were coming in by this corner, coming between 23 and 25? A. Yes.

(Testimony of A. D. Thompson.)

Q. You said, as I understood you, Captain, that you blew a second whistle some time? A. Yes.

Q. Where were you when you blew that whistle?

A. I was just about abreast of 19. [54]

Q. About off 19? A. Yes.

Q. What did that whistle indicate?

A. That indicated the landing whistle.

Q. In other words, that indicated you were going into 19?

A. Not alone that, but where you are passing a wharf, when you cannot see anything at all you blow your whistle.

Q. Is that a whistle that you blew in pursuance with one of the rules? A. Yes.

Q. What rule?

A. That is the rules of the road, you must blow a landing whistle.

Q. That is, you blow a landing whistle when you enter into a dock? A. Yes.

Q. Did you change your course after you saw the "Four Sisters" and before the collision at any time, Captain?

A. When I saw the "Four Sisters" I reversed to full speed astern and ported my helm.

Q. She did not obey her helm, did she?

A. Of course she did. After she backed she throws the water against the rudder and that makes her bow swing to port.

Q. But that was not until after the collision?

A. Yes, I was backing before I hit him.

(Testimony of A. D. Thompson.)

Q. How long before the collision were you backing?

A. Well, I could not say; it might be a few seconds or so, I could not say.

Q. You blew four blasts, did you? A. Yes.

Q. Just before the collision? A. Yes.

Q. How many men did you have on your boat?

A. We had ten men all told.

Q. Where were you at the time of the collision?

A. In the pilot-house.

Q. You were directing the course of the vessel, were you? A. Yes. [55]

TESTIMONY OF O. F. ADAMS, FOR RESPONDENT.

O. F. ADAMS, called for the respondent, sworn.

Mr. EVANS.—Q. Your occupation is what?

A. Marine engineer.

Q. How long have you been a marine engineer?

A. Well, I have got my fifth issue of chief's license.

Q. How long would that be?

A. Over 20 years.

Q. How long have you been with the "Pyramid"?

A. I have been with it now since a year ago last December.

Q. You were on the "Pyramid" on the morning of the collision? A. Yes.

Q. What time did you leave pier 17?

A. We left at 7:55.

(Testimony of O. F. Adams.)

Q. Will you describe as near as you can remember them the bells that you received from the pilot-house and the movements of your engine, the speed you were going at up to the time of the collision.

A. We backed out in the usual way. I have forgotten the bells. You get two bells to back up.

Q. Then after you backed up what did you do?

A. When she gets directed to where she is going you go ahead; I believe she backed up again, and then when he got very close to 21 I believe he backed up.

Q. Then what did he do?

A. Then went ahead.

Q. Have you any idea of the speed at which your vessel was going at the time of the collision?

A. I should judge about 3 miles an hour.

Q. What first called your attention to the impending danger?

A. He gave me three quick bells to back up.

Q. Then what happened?

A. Then he blew four rapid blasts of the whistle; I knew there was danger then because that was the danger whistle.

Q. At what time was the collision?

A. 8:10—8:05; it is in the log. [56]

Q. You have referred to the log-book before it came to court? A. Yes.

Cross-examination.

Mr. BELL.—Q. Where is the whistle on the "Pyramid" located?

(Testimony of O. F. Adams.)

A. It is right forward of the smokestack.

Q. Could you blow the whistle from the pilot-house? A. Oh, yes.

Q. You were below during all the time?

A. Yes, I was in the engine-room.

TESTIMONY OF C. ENGSTROM, FOR RESPONDENT.

C. ENGSTROM, called for the respondent, sworn.

Mr. EVANS.—Q. You were deck-hand on the "Pyramid" at the time of the collision, were you?

A. Yes.

Q. Where were you standing?

A. On top of the poop forward.

Q. When did you go up there?

A. I went up there after we left 17.

Q. When you left 17? A. Yes.

Q. Was anybody with you?

A. Yes, another fellow; there were two of us.

Q. How did you face as you went out?

A. I faced ahead.

Q. What were you doing up there in the bow?

A. I was on top of the bow to take a line.

Q. You came up on top of the bow when? Who was to take a line?

A. I was to take a line to the dock when we got there.

Q. Who asked you to go there?

A. Nobody; I always go there.

Q. You always go there? A. Yes.

Q. As a matter of duty? A. Yes.

(Testimony of C. Engstrom.)

Q. Tell us what happened from the time you left 17 until the time of the collision.

A. We backed out from 17 and came ahead, and then he backed up a couple of times more and went ahead toward 25, and when we got to 21 the "Four Sisters" was coming out, and he blew four short whistles and backed up full speed, and then they came together. [57]

Q. Where was the "Four Sisters" when you first saw her? A. Well, about the end of 23.

Q. About the end of 23? A. Yes.

Q. You mean inside of the slip? A. Yes.

Q. You came along 21 here? A. Yes.

Q. Where was your boat when you first saw the "Four Sisters"?

A. The first I saw of the boat was about even with the north end corner of 21.

Q. Where was the "Four Sisters"?

A. The "Four Sisters" was about down here.

Q. Right in there? A. Yes.

Q. At what speed do you think you were going at the time of the accident, or when you saw the "Four Sisters"?

A. The first time that I seen her?

A. Yes. A. Three miles an hour.

Q. What happened when you saw the "Four Sisters"?

A. He blew 4 whistles, the Captain blew 4 whistles and backed her.

Q. At what angle did the boats hit?

A. About that way, right on the amidships?

(Testimony of C. Engstrom.)

Q. Then what happened?

A. Well, there were two men came down from the pilot-house and one man came from the fore-castle.

Q. Where did the "Four Sisters" go after the collision, just after you were hit?

A. She stopped right there when we backed away from her.

Cross-examination.

Mr. BELL.—Q. Did the whistle of the "Pyramid" blow before she backed or after the time she backed?

A. It blew before.

Q. Before she began to back? A. Yes.

Q. Who was the lookout on the stern of the "Pyramid" when you were backing up?

A. I don't know; I was on top of the bow, I could not tell you. [58]

Q. The boats came together at what angle? This is the "Four Sisters" and this is the "Pyramid."

A. The "Four Sisters" was coming from this direction and here is the "Pyramid" coming. The "Pyramid" was coming like this and the "Four Sisters" like this.

Q. Was the "Four Sisters" coming this way or was it coming that way?

A. It was like this.

Q. That is at the time you struck? A. Yes.

Mr. EVANS.—I have one other man who was standing on the bow at the time of the collision.

(Testimony of H. B. Hampton.)

His testimony would be cumulative and unless Mr. Bell wants to cross-examine him I won't call him.

Mr. BELL.—No.

Mr. EVANS.—That is our case.

TESTIMONY OF H. B. HAMPTON, FOR LI-
BELANT (RECALLED IN REBUTTAL).

H. B. HAMPTON, recalled in rebuttal.

Mr. BELL.—Q. Captain, will you indicate to the Court the angle at which the two vessels came together?

A. Probably like that.

Q. The pencil indicates which vessel?

A. The "Four Sisters."

Q. And the pen indicates the "Pyramid"?

A. Yes, the "Pyramid." When we struck she kind of knocked me over the way a little bit.

Q. Had your course changed after you saw the "Pyramid" and before the collision? A. Yes.

Q. Which direction had it changed in?

A. Changed to port. My vessel was coming out like that and I swung over that way.

Q. Why did you take that swing?

A. So as to hit a glancing blow and so that there would not be any damage to amount to anything. That was my idea.

Mr. BELL.—That is all.

Mr. EVANS.—That is all. [59]

[Endorsed]: Filed May 24, 1927. [60]

[Title of Court and Cause.]

OPINION.

The negligence and fault of the "Pyramid" is clear. After near 15 minutes "hovering" off the ends of piers 17, 19, she proceeded across the pier-head line of 21 and parallel with it, at a distance of less than 50 feet, testified Davis, contrary to the harbor regulation. Aside from that, to thus proceed masked by covered piers was a negligent trap for vessels proceeding with due care out of the slip. Then too, in the circumstances her two widely separated slip signals, were negligence. They indicated entry or departure from slips and not at all a dangerous maneuver across the pier-head line. The latter might have been indicated by a rapid series of whistles. As for the libelant's "Four Sisters," she headed out of pier 23 with reliance upon the regulation and general law of due care by others. Her signal and lookout were for vessels to be expected and plainly visible entering the slip from ahead or forward. She had no reason to expect the "Pyramid" would forge out at a right angle from behind the end of pier 21. In these circumstances the speed of the "Four Sisters" and her only lookout her one-man operator in the pilot-house 40 feet aft the bow, are not negligence contributing to the collision.

Decree for libelant.

April 14, 1927.

BOURQUIN, J.

[Endorsed]: Filed Apr. 14, 1927. [61]

In the Southern Division of the United States
District Court, for the Northern District of
California, Third Division.

IN ADMIRALTY—No. 19,191.

D. L. LARKIN,

Libelant,

vs.

The American Steamship "PYRAMID," Her En-
gines, etc.,

Respondent;

LESLIE-CALIFORNIA SALT COMPANY, a
Corporation,

Claimant and Cross-Libelant;

The American Gas Boat "FOUR SISTERS," Her
Engines, etc.,

Cross-Respondent.

INTERLOCUTORY DECREE.

This cause having been heard on the pleadings
and proofs adduced by the respective parties and
having been argued and submitted, and due deliber-
ation having been had, it is

ORDERED, ADJUDGED AND DECREED
that libelant, D. L. Larkin, recover of and from
the respondent, the damages sustained by reason
of the matters alleged in the libel, together with
interest and costs; and it is further

ORDERED that said cause be referred to Francis
Krull, Esq., Commissioner, to ascertain and com-

pute the amount due to libelant in the premises, and to report the same to this Court will all convenient speed; and it is further [62]

ORDERED, ADJUDGED AND DECREED that the cross-libel of Leslie-California Salt Company be dismissed with costs to libelant.

Dated: San Francisco, July 5, 1927.

BOURQUIN,

United States District Judge.

Approved as to form:

HAROLD SAWYER,

ALFRED T. CLUFF,

Proctors for Respondent and Cross-libelant.

[Endorsed]: Filed Jul. 7, 1927.

Entered in Vol. 22 Judg. & Decrees, at page 1.
[63]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, to D. L. Larkin, the Libelant Above Named, and to Messrs. Bell & Simmons, Proctors for the Said Libelant:

Each of you will please take notice, and each of you is hereby notified that Leslie-California Salt Company, a corporation, claimant and cross-libelant above named, hereby appeals from the interlocutory decree made and entered herein on the 7th day of July, 1927, to the next United States Circuit Court of Appeals for the Ninth Circuit to be

holden in and for the said Circuit at the City and County of San Francisco, State of California.

Dated at San Francisco, this 13th day of July, 1927.

HAROLD M. SAWYER,
ALFRED T. CLUFF,

Proctors for Claimant and Cross-libellant.
DANIEL W. EVANS,
Of Counsel. [64]

Copy of the within is hereby admitted on this 13th day of July, 1927.

BELL & SIMMONS,
Attorneys for Larkin Transp. Co.

[Endorsed]: Filed Jul. 14, 1927. [65]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Leslie-California Salt Company a corporation, claimant and cross-libellant herein, asserts that in the record and proceedings in the above-entitled cause and in the interlocutory decree entered herein, and in the opinion of the Court, there is manifest error in the following particulars:

First: The Court erred in holding that under the circumstances then existing the respondent steamer "Pyramid" owned by the claimant and cross-libellant herein, violated a regulation of the State Board of Harbor Commissioners for the port of San Francisco in passing closer to the pier-

heads than the distance designated in said regulation.

Second: The Court erred in holding that under the circumstances then existing, the said steamer "Pyramid" was negligent in passing near the pier-heads. [66]

Third: The Court erred in holding that the said steamer "Pyramid" was at fault with respect to the whistle signals that she gave.

Fourth: The Court erred in holding that the signal given by the gas boat "Four Sisters," owned by the libellant herein, was proper.

Fifth: The Court erred in holding that the speed of the said gas boat "Four Sisters" did not contribute to the collision.

Sixth: The Court erred in holding that the failure of said gas boat "Four Sisters" to maintain a lookout other than the man at the wheel was not negligence contributing to the collision.

Seventh: The Court erred in failing to hold that the collision was due to the fault of the said gas boat "Four Sisters."

Eighth: The Court erred in dismissing the cross-libel herein.

Ninth: The Court erred in making and entering its interlocutory decree herein in favor of the libellant, and in failing to enter an interlocutory decree herein in favor of the claimant and cross-libellant.

Dated: San Francisco, California, this 13th day of July, 1927.

HAROLD M. SAWYER,
ALFRED T. CLUFF,

Proctors for Claimant and Cross-libellant.
DANIEL W. EVANS,
Of Counsel.

[Endorsed]: Filed Jul. 14, 1927.

Copy of the within is hereby admitted on this 13th day of July, 1927.

BELL & SIMMONS,
Attorneys for Larkin Transp. Co. [67]

[Title of Court and Cause.]

STIPULATION AND ORDER RESPECTING
EXHIBITS ON APPEAL AND BONDS ON
APPEAL.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto:

1. That all of the exhibits introduced in evidence herein may be sent up in connection with the appeal prosecuted herein as original exhibits instead of being copied in the apostles on appeal.

2. That the chart of the San Francisco waterfront and the photostatic enlargement of that section of said chart which shows the section of the waterfront lying between piers 17 and 25, both of which documents were used at the trial herein and

which are now in the possession of the proctors for the claimant and cross-libellant, may be considered as admitted in evidence and may be sent up as original exhibits in the case. [68]

3. That upon the filing by claimant and cross-libellant of a bond for costs in the sum of \$250.00 with an approved surety thereon, as required by Section 1 of Rule II of the Rules in Admiralty, United States Circuit Court of Appeals for the Ninth Circuit, execution may be stayed upon the interlocutory decree herein pending the determination of the appeal and no further bond, superseas or otherwise, shall be required, but the bonds filed in the District Court shall remain in full force and effect.

Dated: San Francisco, California, this 13th day of July, 1927.

BELL & SIMMONS,

Proctors for Libellant.

HAROLD M. SAWYER,

ALFRED T. CLUFF,

Proctors for Claimant and Cross-libellant.

DANIEL W. EVANS

Of Counsel for Claimant and Cross-libellant.

So ordered this 14th day of July, 1927.

FRANK H. KERRIGAN,

District Judge.

[Endorsed]: Filed Jul. 14, 1927. [68½]

[Title of Court and Cause.]

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, United States Fidelity and Guaranty Company, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, and doing business in the City and County of San Francisco, State of California, is held and firmly bound unto D. L. Larkin in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said D. L. Larkin, his successors and assigns, for the payment of which well and truly to be made, the undersigned binds itself, its successors and assigns firmly by these presents.

Sealed with the undersigned's corporate seal and dated this 13th day of July, 1927. [69]

The condition of this obligation is:

WHEREAS, Leslie-California Salt Company, a corporation, as appellant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an interlocutory decree of the District Court of the United States for the Northern District of California, bearing date the 5th day of July, 1927, in a suit in admiralty wherein D. L. Larkin is libellant and the American steamship "Pyramid" is respondent, and Leslie-California Salt Company, a corporation, is claimant and cross-libellant, and the American gas boat "Four Sisters" is cross-respondent.

NOW, THEREFORE, if the above-named appellant, Leslie-California Salt Company, shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By HARRY JOHNSON,
Attorney-in-fact.

State of California,
City and County of San Francisco,—ss.

On this 13th day of July, in the year one thousand nine hundred and twenty-seven, before me, Marie Forman, a notary public in and for the City and County of San Francisco, personally appeared Harry Johnson, known to me to be the persons whose names *are* subscribed to the within instrument as the attorneys-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that *they* subscribed the name of the United States Fidelity and Guaranty Company thereto as principal, and *their* own names as attorneys-in-fact.

[Seal]

MARIE FORMAN,
Notary Public in and for the City and County of
San Francisco, State of California. [70]

Copy of the within is hereby admitted on this 13th day of July, 1927.

BELL & SIMMONS,
Attorneys for Larkin Transp. Co.

[Endorsed]: Filed Jul. 41, 1927. [71]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 71 pages, numbered from 1 to 71, inclusive, contain a full, true and correct transcript of the records and proceedings, in the case of D. L. Larkin vs. The American S. S. "Pyramid," No. 19,191, as the same now remain on file of record in this office.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of twenty dollars and fifty-five cents (\$20.55), and that the same has been paid to me by the proctor for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 22d day of September, A. D. 1927.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [72]

[Endorsed]: No. 5277. United States Circuit Court of Appeals for the Ninth Circuit. Leslie-California Salt Company, a Corporation, Claimant of the American Steamship "Pyramid," Her Engines, etc., Appellant, vs. D. L. Larkin, Owner of the American Gas Boat "Four Sisters," Her Engines, etc., Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed September 22, 1927.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By F. H. Schmid,
Deputy Clerk.